1	BEFORE THE FEDERAL ELECTION COMMISSION
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4	In the matter of)
5	Committee to Elect Charles Walker) MUR 5418
6	and Lourdes Gomez, as treasurer)
7 8	
9	GENERAL COUNSEL'S BRIEF
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12	I. <u>INTRODUCTION</u>
13	This matter was generated based on information ascertained by the Federal
14	Election Commission ("Commission") in the normal course of carrying out its
15	supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On August 25, 2003, in
16	MUR 5328, the Commission found reason to believe that the Committee to Elect
17	Charles Walker and its treasurer violated 2 U.S.C. § 441a(f), based on the acceptance of
18	an excessive contribution in the amount of \$5,000. On February 24, 2004, the
19	Commission severed the portion of MUR 5328 concerning the Committee to Elect
20	Charles Walker and Lourdes Gomez, as treasurer, into a new matter, designated
21	MUR 5418. ¹
22	Based on the following factual and legal analysis, the General Counsel is prepared
23	to recommend that the Commission find probable cause to believe that the Committee to
24	Elect Charles Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).

¹ Ms. Gomez became treasurer of the Committee to Elect Charles Walker on October 1, 2003, as reported in a Statement of Organization electronically filed on that date.

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II. FACTUAL AND LEGAL ANALYSIS²

2 Pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"),

3 an authorized candidate committee may accept \$5,000 from a multicandidate PAC during

4 each election. 2 U.S.C. §§ 441a(a)(2)(A), 441a(f). If a committee accepts contributions

that exceed these limits, its treasurer shall either refund the excessive contributions or

6 seek redesignation or reattribution within sixty days. See 11 C.F.R. § 103.3(b)(3).

7 The Act states that for purposes of the limitations set forth in 2 U.S.C.

8 §§ 441a(a)(1) and 441a(a)(2), all contributions made by political committees "established

or financed or maintained or controlled by any . . . person . . . or by any group of . . .

persons, shall be considered to have been made by a single political committee."³

11 2 U.S.C. § 441a(a)(5). Committees established, financed, maintained or controlled by the

same person or group of persons are "affiliated committees." 11 C.F.R. § 100.5(g).

13 Contributions made to or by such committees shall be considered to have been made to or

by a single committee. See 11 C.F.R. §§ 100.5(g) and 110.3(a)(1).

The Committee to Elect Charles Walker ("Walker Committee") is a political committee within the meaning of 2 U.S.C. § 431(4), and is the authorized principal

17 campaign committee of Charles Walker. PAC to the Future is an unauthorized

multicandidate committee that has been registered with the Commission since March 24,

19 1999 and qualified for multicandidate committee status on September 28, 1999. PAC to

20 the Future's Statement of Organization listed Leo McCarthy as its treasurer. Team

² All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

³ Section 441a(a)(5) provides specific exceptions, none of which are relevant here.

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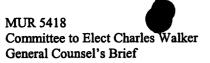
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Majority is an unauthorized multicandidate committee that initially registered with the 1

- 2 Commission under the name "Team Pelosi" on April 1, 2002. This committee amended
- its name to "Team Majority" on July 24, 2002, in response to a letter from the 3
- Commission reminding it that an unauthorized committee's name may not include the 4
- 5 name of a candidate. See 2 U.S.C. § 432(e)(4). Team Majority's Statement of
- 6 Organization also listed Leo McCarthy as its treasurer.

PAC to the Future made a \$5,000 general election contribution to the Walker 7 8

Committee on October 15, 2002, and Team Majority made a \$5,000 general election

9 contribution to the Walker Committee on the same date. The Walker Committee reported

10 receiving both of these contributions on October 23, 2002.

PACs were affiliated. See supra note 4.

PAC to the Future's and Team Majority's disclosure reports show that, in 2002, the two PACs received contributions from many of the same contributors and made contributions to many of the same committees. PAC to the Future and Team Majority share a common treasurer who reportedly acknowledged that the primary reason for forming Team Majority was to "give twice as much [sic] hard dollars." On or around October 24, 2002, news articles appeared in publications questioning whether the two

See Ethan Wallison, Pelosi PAC Stirs Questions, ROLL CALL (Oct. 24, 2002) available at http://www.rollcall.com/pages/ news/00/2002/10/news1024b.html. See also Mark Sherman, Campaign Finance Experts Question Use of Pelosi's PACs, ASSOCIATED PRESS (Oct. 24, 2002); Pelosi to Stop Using PAC questioned by Campaign Finance Experts, ASSOCIATED PRESS (Oct. 25, 2002); Tom Diemer and Martin Stolz, U.S. House Candidate Ryan Returns Questionable Gift, THE PLAIN DEALER (Oct. 29, 2002).

Starting October 25, 2002, Team Majority, through Brian L. Wolff,⁵ began to contact committees to which it made contributions that, when aggregated with those received by PAC to the Future, exceeded the Act's limits for a single committee. Within one week, Team Majority stopped making contributions to candidates and, within three weeks, Team Majority received refunds from over twenty (20) committees to which it made contributions that, when aggregated with those received by PAC to the Future, exceeded the Act's limits for a single committee. In addition, Team Majority contemporaneously refunded contributions to individuals who contributed in excess of \$5,000 to the two PACs, and stopped accepting contributions from individuals who had already contributed to PAC to the Future. PAC to the Future and Team Majority later acknowledged their affiliated status in a conciliation agreement and in amended filings with the Commission.⁶

Accordingly, all contributions made by Team Majority and PAC to the Future should be considered to have been made by a single committee. Because the two PACs were limited to making a \$5,000 contribution to any candidate committee, the contributions made by PAC to the Future and Team Majority, when aggregated, resulted

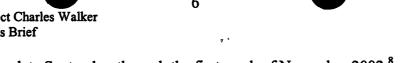
⁵ Mr. Wolff reportedly served as "the chief fundraiser for House Minority Leader Nancy Pelosi." See Chris Cillizza, DCCC, DSCC Finish Filling Top Staff Positions, ROLL CALL (Feb. 26, 2003). In 2002 and 2003, Team Majority disclosed various disbursements to Mr. Wolff, e.g., for "Fundraising services," "Travel expenses" and "Administrative services."

The Commission entered into a conciliation agreement with PAC to the Future and Leo McCarthy, as treasurer, and Team Majority and Leo McCarthy, as treasurer, to resolve violations of the FECA stemming from excessive contributions received from two individual contributors totaling \$10,000, excessive contributions made to five authorized committees (including the Walker Committee) totaling \$25,000, and the failure to disclose the affiliated status of PAC to the Future and Team Majority. The agreement was accepted by the Commission on October 8, 2003. Pursuant to the terms of the agreement, on October 31, 2003, PAC to the Future and Team Majority filed amended Statements of Organization disclosing their affiliated status.



- in an excessive contribution to the Walker Committee in the amount of \$5,000. See
- 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f).
- In a letter to the Commission dated November 7, 2003, the two PACs indicated
- 4 through counsel that they had notified the candidate committees receiving excessive
- 5 contributions which included the Walker Committee that the PACs waived their right
- 6 to a refund of the excessive contributions. The Walker Committee's FEC reports,
- 7 covering activity through September 30, 2004, do not disclose any refund or
- 8 disgorgement of the \$5,000 excessive contribution. See 11 C.F.R. § 103.3(b)(3).
- The evidence gathered during the Commission's investigation of this matter
- shows that, soon after the excessive contribution was made, the Walker Committee
- received at least two refund requests from Brian L. Wolff on behalf of Team Majority.
- 12 First, a call log spreadsheet prepared by Mr. Wolff indicates that he contacted
- representatives of numerous recipient committees by phone on October 25, 2002,
- including "Lorraine" with the Walker Committee. Lorraine Miller informed
- 15 Commission staff that she coordinated get-out-the-vote activities for the Walker

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Committee from late September through the first week of November 2002.8 Ms. Miller 1 2 recounted a meeting in the candidate's office prior to the general election that she said 3 may have been prompted by a phone call from Mr. Wolff. She estimated that there were 4 four or five campaign staff members at the meeting, and that the specific topic was 5 whether to refund Team Majority's contribution. She recalled that they concluded that 6 the campaign did not have sufficient funds to issue a refund. However, according to 7 disclosure reports filed with the Commission, the Walker Committee received over 8 \$78,000 in contributions between October 25, 2002 – the date of Mr. Wolff's phone call - and the November 5th election, and received an additional \$13,000 in contributions 9 10 during the week following the election. 11 Second, Mr. Wolff appears to have memorialized his conversation with 12 Ms. Miller in a November 21, 2002 letter received by the Walker Committee at its headquarters in Augusta, Georgia. The letter was sent by Mr. Wolff from Team 13 14 Majority's San Francisco office. The text of the letter is as follows: 15 Dear Lorraine, 16 I am writing in reference to the Team Majority contribution that was made 17 to the [Walker Committee] on 10/15/2002. I called October 25, 2002 18 regarding the return of the contribution [emphasis added]. 19 20 Team Majority has voluntarily decided to suspend all its operations. 21 Subsequently, the Federal Election Commission has received a complaint 22 regarding the PAC. In light of this development, it is most important that 23 the contribution be returned to the address below as soon as possible. We 24 believe this will correct any perceived misunderstanding with regard to the 25 FEC and your campaign.

⁸ Lorraine Miller is currently listed in the Congressional Staff Directory as the Director of Intergovernmental Relations in the Office of the Minority Leader (Nancy Pelosi). The Walker Committee reported a \$4,381.94 disbursement to "Lorraine Miller" on November 5, 2002, itemized as "Expense Reimbursement - Travel."



If you should have any questions please do not hesitate to call me at 415-296-5111.

Sincerely.

4 Sinc

5 Brian L. Wolff

A copy of a Federal Express invoice indicates that the letter was delivered on November 22, 2002, and signed for by "L. Gomez," an apparent reference to the Walker Committee's current treasurer, Lourdes Gomez.⁹

Accordingly, the available evidence suggests that Mr. Wolff called the Walker Committee on October 25, 2002 to request a refund, that the excessive contribution was discussed by campaign staff prior to the November election, and that the letter confirming the phone call and reiterating the request was received by the Walker Committee on November 22, 2002. Each of these events occurred well before the 60-day deadline for returning the excessive contribution. *See* 11 C.F.R. § 103.3(b)(3). By failing to refund the money, the Walker Committee knowingly accepted an excessive contribution.

Based on the foregoing factual and legal analysis, the General Counsel is prepared to recommend that the Commission find probable cause to believe that the Committee to Elect Charles Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).

⁹ Although Ms. Gomez did not serve as treasurer in 2002, the Walker Committee disclosed a \$2,000 payment made to Ms. Gomez on November 6, 2002 for "Political Consulting."

III. **RECOMMENDATION**

Find probable cause to believe that the Committee to Elect Charles Walker and Lourdes Gomez, as treasurer, violated 2 U.S.C. § 441a(f).

10/21/04

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anders

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Attorney